IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION No.830 OF 2006

Nishigandh Sahaniwas Co-op.
Housing Society Ltd. & Ors. .. Petitioners

Versus

Smt.Kusum Venkatesh Shet & ors. .. Respondents

Mr.Raju More with V.S.Talkute for petitioners
Mr.M.P.Vashi for respondent no.1
Mr.Harshad M.Deshpande for respondent no.2

CORAM : S. C. DHARMADHIKARI, J
DATE : 23RD FEBRUARY, 2006

P.C.:

1. Heard Mr.More for the petitioner-Society and Mr.Vashi for respondent-disputant.

2. The original disputant is residing in Flat No.19 in the Cooperative Housing Society in question. The grievance of the original disputant is that in the flat

above her flat viz. Flat No.23, extensive work being carried out by the occupant thereof, has resulted in cracks and leakages in the flat in her occupation viz. flat No.19.

3. The trial court was approached essentially with the prayer that the society must look into all these complaints and take remedial steps, more so, when it is carrying out extensive repairs to the structure.

4. The trial court after hearing both sides has directed that the society and its office bearers must inspect and examine the flat No.23 along with Structural Engineer and Architect and identify the cracks and leakages therein. Thereafter, the flat in occupation of the disputant being Flat No.19 should also be inspected and leakages therein be identified and repaired. The trial court as well as lower appellate court has kept the issue of payment of costs of such repairs open for being decided at a subsequent stage.

5. After having perused the order of the trial court and that of the lower appellate court, I find no reason to interfere with the same under Articles 226 and

227 of the Constitution of India, more so, when all that the order directs is identification of cause of leakages and taking remedial measures. Ultimately, the flat is in Cooperative Housing Society and therefore, the Cooperative Housing Society is directed to inspect/examine as well as identify the cause of such leakages. If they are internal leakages and repairs as suggested by Shri More then, it is for the Society to point out that even after remedial measures and repairs are undertaken, ultimately, the same has to be kept in a fit state of occupation by the members concerned and therefore, all charges must be borne by the said members. Equally, the member would be contending that the repair costs should not be foisted on him/her. Such contention are open to be urged by both sides and merely because the direction to identify the cause of leakages and cracks has been passed, does not mean that the liability is foisted on the Society.

6. It is for the benefit of the disputant if she provides the necessary cooperation to all concerned. It is only then that the trial court’s direction in her favour could be given effect to and implemented. Unless and until such cooperation is extended the repairs

cannot be carried out. Mr. Vashi states that the original disputant will extend all cooperation and permit the identification and survey as well as repair in the flat in occupation. It is the report dated 27th September, 2005 (Exh.G page 96) which would be considered while carrying out the order of the courts below. The remarks made therein and the remedy suggested would be governing the repairs that would be carried out under the order of the courts below. However, as far as the burden of sharing the cost and/or expenses is concerned, that will be decided by the trial court while passing final order on the dispute.

7. It is also clarified that this order is passed in the peculiar facts and circumstances of this case and all observations should not be construed as a precedent for other cooperative housing societies.

8. The repairs will be carried out and completed by the parties within a period of six weeks from today.

9. In the light of this order, Mr. Vashi states that the disputant would not press the Contempt proceeding. Petition disposed off. No costs.

(S.C.Dharmadhikari,J.)